

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

In the matter of

XXXXX

Petitioner

File No. 91980-001

v

Blue Care Network of Michigan  
Respondent

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Issued and entered  
this 18<sup>th</sup> day of September 2008  
by Ken Ross  
Commissioner

**ORDER**

**I**

**PROCEDURAL BACKGROUND**

On August 6, 2008, XXXXX, on behalf of her minor daughter XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On August 13, 2008, after a preliminary review of the material submitted, the Commissioner reviewed the request and accepted it.

The Petitioner has health care coverage from Blue Care Network of Michigan (BCN). Her coverage is defined in the BCN 10 certificate of coverage (the certificate). The issue in this matter can be resolved by analyzing the certificate. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

**II**

**FACTUAL BACKGROUND**

The Petitioner, through her physician, requested approval for a bone-anchored hearing aid (BAHA). A BAHA is a type of bone conduction hearing aid consisting of a titanium screw surgically implanted in the temporal bone behind the ear. An external hearing aid is attached and sound is conducted from the external hearing aid to the implanted screw and then, through bone conduction, to the cochlea.

BCN denied coverage for the requested device and the Petitioner appealed. The Petitioner exhausted the internal grievance process and BCN issued its final adverse determination letter dated July 11, 2008.

### **III ISSUE**

Was BCN's denial of the BAHA correct under the terms of the certificate?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner, born XXXXX, has profound hearing loss in her left ear and has suffered numerous infections. Because of her hearing loss she has trouble with her balance, has difficulty hearing in school, often becomes confused because she cannot determine where sound is coming from, cannot have a conversation in crowded or noisy places, and often feels left out.

The Petitioner's hearing disorders specialist, XXXXX, MD, recommended that a BAHA be implanted to prevent the risk of further infection. In a letter dated March 12, 2008, XXXXX stated:

[The Petitioner] is under my care.... She has profound nerve hearing loss in her left ear. A hearing aid in that ear would not function to give her any useful hearing. She would be a possible candidate for a CROS hearing aid, however, that would necessitate her wearing hearing aids in both ears. She has had a problem with keeping the ear dry; and hearing aid use in the left ear, as is needed in a CROS hearing aid, would increase the chances that [the Petitioner] would need a tympanoplasty.

Because of the above, I would not recommend a CROS hearing aid for placement in the left ear. I would recommend the bone-anchored hearing aid device or BAHA. This would allow her to successfully

adapt the CROS technology without having to put a hearing aid in the left ear, which would put her at risk of further infection.

The Petitioner's mother argues the BAHA is a prosthetic device, not a hearing aid, and that prosthetic devices are included in the Petitioner's coverage. She also says that CMS and HCPCS consider the BAHA to be a prosthetic.

The Petitioner believes that BCN is required to authorize the BAHA because it is medically necessary and would be "life-altering" for her.

#### Blue Care Network's Argument

BCN believes it was correct in denying authorization and coverage for the BAHA. It told the Petitioner in its final determination, "[S]ince your contract does not include a hearing aid rider, your request for authorization remains denied."

#### Commissioner's Review

The BCN certificate controls the analysis in this case. The certificate contains the following provisions (pages 10-11):

#### **SECTION 1.16: Prosthetics, Orthotics and Corrective Appliances**

##### **Definitions:**

- **Prosthetic** devices help the body to function or replace a limb or body part after loss through an accident or surgery.
- **Orthotic** appliances are used to correct a defect of the body's form or function.
- **Corrective appliances** are items such as eyeglasses or contact lenses.
- **Artificial aids** are items such as cardiac pacemakers and artificial heart valves

\* \* \*

#### **B. Coverage – Corrective Appliances and Artificial Aids**

\* \* \*

##### **Exclusions:**

The following are **not** covered:

- Items such as:

\* \* \*

- Hearing aids

As a health maintenance organization (HMO), BCN is required by state law to include “basic health services” in its contracts. See MCL 500.3519. However, not all medically necessary services or devices are included in the definition of “basic health services.” See MCL 500.3501(b). Coverage for prosthetics and other corrective aids and appliances is not required. If an HMO covers them, it may limit that coverage as it sees fit or as a group customer requests.

The Petitioner’s mother argues that the BAHA should be categorized as a prosthetic and points out that prosthetics are included for coverage in the certificate. However, the certificate says (page 11) that a prosthetic item must meet BCN’s definition, and prosthetic devices are defined as those that “help the body to function or replace a limb or body part after loss through an accident or surgery” [emphasis added]. There is no showing in this record that the Petitioner’s hearing loss was the result of an accident or surgery.

BCN categorizes hearing aids as corrective appliances or artificial aids, categories that include eyeglasses and contact lenses and implanted items such as cardiac pacemakers and heart valves. Since hearing aids are specifically excluded from coverage under those categories, the Commissioner concludes that they are not a covered benefit for the Petitioner. Further, BCN says that coverage for hearing aids may be provided by a rider to the certificate and in the Petitioner’s case, no such rider exists.

The Commissioner is sympathetic to the Petitioner’s situation. The Petitioner’s mother convincingly explained how the BAHA would improve her daughter’s life. Unfortunately, not all necessary services are covered under the BCN certificate.

The Commissioner finds that BCN’s final determination is consistent with its certificate of coverage.

**V  
ORDER**

The Commissioner upholds BCN's July 11, 2008, final adverse determination. BCN is not required to provide coverage for the Petitioner's bone-anchored hearing aid.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.